IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

-

WRIT PETITION NO : 5003 of 2004

Between:

Asa Ravi S/o Rajaiah, aged about 29l years, Occ: Ward Member,
R/o H.No. 1-16, Lachapur (V), Dubbaka Mandal, Medak District

..... PETITIONER

AND

1 Istharigalla Chandraiah S/o Pochaiah, aged about 40 years,
R/o H. NO. 1-56, Lachapur (V) Dubbaka (M), Medak District
2 The Election Officer, Stage II of Lachapur Gram Panchayat, Dubbaka

Mandal Parishad, Mohan Reddy, Head Master, R/o H. No. 13-1, NGO Colony, Siddipet, Medak District.

3 The Polling Officer of Lachapur Gram Panchayat, (Srinu), C/o M.P.D.O. Dubbaka, Medak District

4 The Election Officer, Stage No.1, Lachapur Gram Panchayat, Dubbaka,

Medak District
5 Mandal Parishad Development Officer, O/o The Mandal Praja Parishad,

Dubbaka, Medak District
6 The Executive Officer, Gram Panchayat, Lachapet(V), Dubbaka Mandal,

Medak District

7 The District Collector-cum- Commissioner, (PR), Medak District at

Sangareddy

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or Direction more particularly one in the nature of Writ of Certiorari

calling for the records pertaining to the Order dated 20-12-2003 passed in O.P.No.11/2001 on the file of election Tribunal and Junior Civil Judge, Siddipet and to quash the same as illegal, arbitrary and un-constitutional.

Counsel for the Petitioner: MR.S.NIRANJAN REDDY

Counsel for the Respondent No.1: MR.KOKA RAGHAVA RAO, Senior Advocate

Counsel for the Respondent Nos.2 to 4: MR. V.V.PRABHAKAR

Counsel for the Respondent Nos.5 & 6: SMT.JYOTHI ESWAR GOGINENI

Counsel for the Respondent No.7: GP FOR PANCHAYAT RAJ

The Court at the stage of admission made the following ORDER:

The petitioner was elected to the Ward No.1 of Lachapet Village, Dubbaka Mandal, Medak District. During elections, he was secured 81 votes as against 80 votes accrued by the first respondent. Alleging that there are some irregularities in counting of the votes, the first respondent challenged the election of the petitioner in O.P.No.11 of 2001 on the file of the learned Junior Civil Judge-cum-Election Tribunal, Siddipet (for short "the Tribunal"). After the evidence was adduced on either side, the Tribunal by its order dated 05-12-2003 allowed the election petition ordering for recount of votes and further directed the Election Officer to come along with his staff to recount the votes in the open court before the contesting candidates and their counsel on 20-12-2003. Pursuant to the said order, recounting was undertaken on the relevant date, on which, the petitioner as well as respondent and their agents were participated. After counting of the ballot papers, the votes polled in favour of the petitioner is same as that of 81 whereas the first respondent also got 81 votes and there are 5 invalid votes. On the objection made by the petitioner's counsel, counting of the counterfoils was counted and total was found 166. One counter folio No.114288 was found missing. In view of the fact that both the candidates secured equal number of votes, the Tribunal by an order dated 20-12-2003 set aside the election held on 14-08-2001 for the Ward No.1 of Gram Panchayat Lachapet Village and directed the fifth respondent-Mandal Parishad Development Officer, Dubbaka, Medak district, to follow the next procedure to be

adopted when the candidates get equal number of votes. Assailing the correctness of the said order, the present writ petition is filed.

The learned counsel for the petitioner submits that the total number of votes polled are 166 as per counterfoils and according to the counting made, it was 166 whereas as per the counting, which was undertaken in the open Court, the same comes to 167 i.e. 81 + 81 + 5 (invalid votes). In view of the same, the Tribunal erred in accepting the result of recounting of votes without any valid reason.

The order dated 05-12-2003 passed by the Tribunal allowing E.P. for recounting of the votes was not the subject matter of challenge in the present writ petition. Whereas consequential order setting aside the election on such recounting and issuing direction to the Election Officer is the subject matter of challenge in the present writ petition. Petitioner, who has not challenged the order dated 05-12-2003 ordering recount, participated in the process of recounting. Once jurisdiction to order recount found to have rightly exercised has become final, court cannot refuse to give effect to the results as per the will of the electorate. In view of the fact that the petitioner and the first respondent secured equal number of votes, the Tribunal rightly directed the fifth respondent to follow the next procedure to be adopted when the candidates get equal number of votes by setting aside the election held on 14-08-2004 to the Ward No.1, Gram Panchayat, Lachapet Village.

In view of the same, I see no infirmity in the impugned order passed by the Tribunal and the Tribunal has not committed any incurable error in giving direction to the fifth respondent through impugned order.

The writ petition is accordingly dismissed. No costs.

24th SEPTEMBER, 2004.

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To

1 The Election Tribunal and Junior Civil Judge, Siddipet, Medak District.

2 The Election Officer, Stage II of Lachapur Gram Panchayat Dubbaka

Mandal Parishad, Mohan Reddy, Head Master, R/o H. No. 13-1, NGO Colony, Siddipet, Medak District

3 The Polling Officer of Lachapur Gram Panchayat, (Srinu), C/o M.P.D.O. Dubbaka, Medak District

4 The Election Officer, Stage No.1, Lachapur Gram Panchayat, Dubbaka

Medak District

5 Mandal Parishad Development Officer, O/o The Mandal Praja Parishad,

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6 The Executive Officer, Gram Panchayat, Lachapet(V), Dubbaka Mandal,

Medak District

7 The District Collector-cum- Commissioner, (PR), Medak District at

Sangareddy.

8 Two CCs to the Government Pleader for Panchayat Raj, A.P.High Court Buildings, Hyderabad (OUT)

9 Two CD copies